



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 25, 2006

Ms. Liza Marie Aguilar
Hermansen, McKibben, Woolsey & Villarreal, L.L.P.
1100 Tower II
555 North Carancahua
Corpus Christi, Texas 78478

OR2006-00839

Dear Ms. Aguilar:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 240818.

The Corpus Christi Housing Authority (the "authority"), which you represent, received a request for the following: (1) the requestor's personnel file, including statements related to the investigation resulting in his termination; (2) all Central Office personnel job descriptions for the years 2003 through 2005; and (3) a copy of the public notice posted for a meeting on October 25, 2005. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.¹

Initially, we note that the submitted information includes a notice of a public meeting of the authority's board of commissioners. Section 551.041 of the Government Code requires a governmental body to give written notice of the date, hour, place, and subject of each meeting held by the governmental body. Gov't Code § 551.041. Additionally, section 551.043 of the Government Code states a governmental body must post such notice in a

¹We assume that, to the extent any additional responsive information existed on the date the authority received this request, such information has been released to the requestor. If the authority has not released any such information, it must do so at this time. See Gov't Code §§ 552.301, .302; Open Records Decision No. 664 (2000) (concluding that section 552.221(a) requires that information not excepted from disclosure must be released as soon as possible under circumstances).

place readily accessible to the general public at all times for at least 72 hours before the scheduled time of the meeting. Gov't Code § 551.043. When a statute expressly makes information public and mandates its release, the information generally cannot be withheld from disclosure under the Act. *See* Open Records Decision No. 451 (1986) (specific statute that affirmatively requires release of information at issue prevails over litigation exception of the Act). Therefore, the submitted notice of a public meeting must be released to the requestor.

Next, we note that section 552.022 of the Government Code may govern some of the submitted information. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

(15) information regarded as open to the public under an agency's policies[.]

Gov't Code § 552.022(a)(15). The submitted information contains job descriptions, which are usually open to the public as part of a job posting.² This information is expressly public under section 552.022(a)(15). If the authority regards the submitted job descriptions as open to the public, then the authority may withhold this information only to the extent it is made confidential under "other law." Section 552.103 of the Government Code is a discretionary exception and therefore does not constitute "other law" for purposes of section 552.022. *See* Open Records Decision Nos. 663 (1999) (governmental body may waive section 552.103), 473 (1987); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Accordingly, the authority may not withhold the submitted job descriptions under section 552.103. Therefore, these job descriptions must be released pursuant to section 552.022(a)(15) if the authority regards them as open to the public.

We now address your claim under section 552.103 of the Government Code for the remaining information that is not subject to section 552.022(a)(15) of the Government Code. Section 552.103 provides in pertinent part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

...

²We note that job descriptions of open positions appear to be available on the authority's website.

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The authority has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. The test for meeting this burden is a showing that (1) litigation was pending or reasonably anticipated on the date that the authority received the request for information, and (2) the information at issue is related to that litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *see also Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The authority must meet both prongs of this test for information to be excepted under section 552.103(a).

To establish that litigation is reasonably anticipated, a governmental body must provide this office “concrete evidence showing that the claim that litigation may ensue is more than mere conjecture.” Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body’s receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.³ *See* Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 at 5 (1989) (litigation must be “realistically contemplated”).

In this instance, you state that the requestor’s employment as an attorney for the authority was recently terminated. After his termination, the requestor notified the authority of his intent to file suit. In addition, along with the request for information, the requestor made various “Demand[s] Before Filing Suit,” which included demands for monetary payments from the authority, in part, “[f]or wrongful termination and libelous and slanderous statements.” Based on your representations and our review of the information at issue, we find that the authority reasonably anticipated litigation on the date it received the instant request. We also find that the remaining submitted information is related to the anticipated litigation for purposes of section 552.103. Accordingly, we conclude that the authority may withhold the remaining submitted information pursuant to section 552.103.

We note, however, that once information has been obtained by all parties to the anticipated litigation through discovery or otherwise, no section 552.103(a) interest exists with respect

³ In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

to that information. *See* Open Records Decision Nos. 349 (1982), 320 (1982). Thus, information that has either been obtained from or provided to the potential opposing party in the anticipated litigation is not excepted from disclosure under section 552.103(a) and may not be withheld from the requestor on that basis. We further note that the applicability of section 552.103(a) ends once the litigation has been concluded. *See* Attorney General Opinion MW-575 (1982); *see also* Open Records Decision No. 350 (1982).

In summary, we conclude as follows: (1) the submitted notice of a public meeting must be released; (2) to the extent that the authority regards the submitted job descriptions as public, the authority must release them pursuant to section 552.022(a)(15) of the Government Code; and (3) the remaining information may be withheld under section 552.103 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

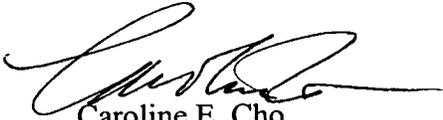
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Office of the Attorney General at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 240818

Enc. Submitted documents

c: Mr. Edel P. Ruiseco
P.O. Box 7284
Corpus Christi, Texas 78467-7284
(w/o enclosures)